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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re JUAN N., a Person Coming Under the
Juvenile Court Law.

B233466

(Los Angeles County
Super. Ct. No. JJ16982)

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN N.,

Defendant and Appellant.

APPEAL from an order of wardship of the Superior Court of Los Angeles County, Steven R. Klaif, Juvenile Court Referee. Affirmed.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Juan N., a minor, appeals from an adjudication of the juvenile court finding he committed two counts of making criminal threats (Pen. Code, § 422)¹ and declaring him a ward of the court pursuant to Welfare and Institutions Code section 602. Juan contends there is insufficient evidence in support of count 2. We conclude there is sufficient evidence to sustain the adjudication and therefore affirm.

BACKGROUND

On January 1, 2010, Kevin M. was at home. He received a posting on his Myspace page from Juan, who often used the name “Manny Fresh” in making posts. Kevin and his older brothers, Heriberto M. and Bryan M., used to be friends with Juan. Up until a few months before, they had lived on the same street and had a friendship going back several years. However, Juan had started to hang around with boys that Heriberto knew to be members of the Eastcoast Crips gang, had become increasingly hostile and had “turned against” Heriberto. Juan damaged their mother’s car and attacked Bryan on his way home from school. The family made the decision to move away. They were living in their new home in January 2010 when Juan’s threatening post was received by Kevin.

The Myspace posting stated: “Cush out crew to the fullest 187 Game and Pboy.” Kevin knew that Juan called his crew the “cush out crew,” that 187 means to kill somebody, and that “Game” and Pboy” were Heriberto’s and Bryan’s respective nicknames. Kevin saw the post as a threat to his two brothers and it scared him, so he showed it to them immediately.

When Heriberto saw the posting on his brother’s page on January 1, 2010, he understood it to be a threat to kill him and Bryan. Heriberto had blocked Juan on his own Myspace page and did not receive any direct postings from Juan. Heriberto was scared by Juan’s threat because he knew what Juan was “capable of doing.” Heriberto saw multiple similar threatening Myspace “updates” made by Juan directed

¹ All further undesignated section references are to the Penal Code.

to him and his family such as: “You fucking snitch. I’m going to catch you and your fucking mom”; “I’m going to catch you slipping”; “187 bitch has game”; and “Fucking snitches, running to the cops. I’m still going [to] get you fools.”

On January 8, 2010, Heriberto was driving his car on San Pedro Street and was stopped at a red light. Juan came out of a restaurant called Tam’s with another individual, saw Heriberto and charged into the street, screaming at Heriberto. Juan was “throwing up gang signs” and lifted his shirt, exposing a gun at his waistband. Heriberto drove off before it escalated further.

Later that evening when Heriberto was getting ready for bed, he heard a loud crashing sound outside his house. He went to the window and saw Juan and another individual near his gate. The two then ran to a Mustang, which Heriberto recognized as Juan’s cousin’s car, and drove away. In the morning, Heriberto saw that a brick had been thrown threw his car window.

Kevin also showed the Myspace posting to his brother Bryan on January 1, 2010. Bryan understood it to be a threat by Juan that he was going to kill him. It scared Bryan because he knew Juan was “capable of doing it.” Bryan had been friends with Juan when they lived nearby, but shortly before his family moved away, Juan and some of his friends “jumped” Bryan on his way home from school, hitting and kicking him repeatedly. Juan had also “socked” him on another occasion.

Sometime during the week of January 1, 2010, Kevin and his brothers reported the threat to the police. On March 3, 2010, Douglas Bell, an officer with the Los Angeles Police Department’s Newton Division, served a search warrant at Juan’s home. Officer Bell recovered various items, including a pellet gun and a paper with Eastcoast Crips written on it. During an interview with Juan, Juan admitted to making the Myspace posting on January 1, 2010. Juan was taken into custody that day.

A Welfare and Institutions Code section 602 petition was filed charging Juan with three counts: (1) making criminal threats to Heriberto arising from the January 8, 2010 incident outside the restaurant (§ 422); (2) making criminal threats to Bryan

arising from the posting on Myspace (§ 422); and misdemeanor vandalism arising from the breaking of Heriberto's car window on January 8, 2010 (§ 594, subd. (a)).

Following testimony from several witnesses, including both victims, and argument from counsel, the court sustained counts 1 and 2 pursuant to section 422 and dismissed the vandalism count. Juan was adjudged a continuing ward of the court. (Wel. & Inst. Code, § 602.) The court continued an earlier order from a prior adjudication placing Juan on probation. The juvenile court ordered care, custody and control of Juan transferred to the probation department, with Juan allowed to return to the home of his parents under supervision of probation, subject to various terms and conditions, including that he stay away from, and have no direct or indirect contact with, the victims' entire family. This appeal followed.

DISCUSSION

The sole issue on appeal is whether there is sufficient evidence in support of count 2, the criminal threat against Bryan in violation of section 422² based on the posting to Myspace. Juan contends there is not. He argues there is no evidence he had any specific intent for Bryan to see, or otherwise be shown, the January 1, 2010 Myspace posting, and no evidence there was any immediate prospect for execution of the vague and nonspecific threat.

The same substantial evidence test for review of a criminal conviction applies in reviewing a juvenile court's finding in a juvenile proceeding. (*In re Roderick P.*

² Section 422, subdivision (a) provides: "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison."

(1972) 7 Cal.3d 801, 808-809; accord, *In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605.) The reviewing court must determine “whether the record contains any substantial evidence tending to support the finding of the trier of fact, and in considering this question we must view this evidence in the light most favorable to the finding. [Citation.] The test is not whether guilt is established beyond a reasonable doubt. [Citations.] ¶ “[The] appellate court is required to determine whether a reasonable trier of fact could have found that the prosecution sustained its burden of proving the defendant guilty beyond a reasonable doubt [Citations]. . . . [I]n determining whether the record is sufficient in this respect the appellate court can give credit only to ‘substantial’ evidence, i.e., evidence that reasonably inspires confidence and is ‘of solid value.’ ” ” (*In re Roderick P.*, at p. 808-809.) Indulging all reasonable inferences in favor of the judgment as we are required to do, we conclude there is substantial evidence to support a finding of Juan having made a criminal threat to Bryan within the meaning of section 422.

Five elements must be established to prove the offense of making a criminal threat under section 422: “ ‘(1) that the defendant “willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,” (2) that the defendant made the threat “with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,” (3) that the threat—which may be “made verbally, in writing, or by means of an electronic communication device”—was “on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,” (4) that the threat actually caused the person threatened “to be in sustained fear for his or her own safety or for his or her immediate family’s safety,” and (5) that the threatened person’s fear was “reasonabl[e]” under the circumstances.’ [Citation.]” (*In re George T.* (2004) 33 Cal.4th 620, 630.)

Juan admitted he posted the threat on Myspace, but he argues he never directly communicated the threat to Bryan and there is no evidence he intended the Myspace

posting to be shown to Bryan. Section 422 may be violated by a threat indirectly communicated to the threatened person. (*In re David L.* (1991) 234 Cal.App.3d 1655, 1659 [criminal threat “may as readily be conveyed by the threatener through a third party as personally to the intended victim”]; accord, *People v. Teal* (1998) 61 Cal.App.4th 277, 280 [defendant yelling death threats outside victim’s home, while battering front door of home and trying to break window, violated section 422 even though there was no evidence defendant knew victim was home at the time].) “As with murder, if one shoots with the intent to kill, it is murder whether or not the shooter knows his bullet has hit its mark. So too, if one broadcasts a threat intending to induce sustained fear, section 422 is violated if the threat is received and induces sustained fear—whether or not the threatener knows his threat has hit its mark.” (*Id.* at p. 281.)

Moreover, the elements for proving a criminal threat under section 422 must be viewed in context. “It is clear that the nature of the threat cannot be determined only at face value. Section 422 *demands that the purported threat be examined ‘on its face and under the circumstances in which it was made.’*” (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1137, italics added; accord, *In re Ryan D.* (2002) 100 Cal.App.4th 854, 860; *People v. Felix* (2001) 92 Cal.App.4th 905, 913 [“the setting in which the defendant makes the remarks must be considered”].) The type of circumstances to be considered “include such things as the prior relationship of the parties and the manner in which the communication was made. [Citation.] [And] [a]lthough an intent to carry out a threat is not required, the actions of the accused after making the communication may serve to give meaning to it.” (*In re Ryan D.*, *supra*, 100 Cal.App.4th at p. 860.)

Here, Juan posted the threat on Kevin’s Myspace page. Juan knew Kevin was Heriberto’s and Bryan’s younger brother, having lived next to and been friends with the brothers for several preceding years. Juan’s threat to kill Kevin’s two brothers frightened him, and Kevin showed them the posting the same day.

There was an extensive prior history between the parties, including a recent escalation of hostile conduct by Juan directed at the whole family—conduct of which Juan could not reasonably have believed Kevin was ignorant. Juan had begun hanging around with known members of the Eastcoast Crips gang, he had turned against Heriberto, he had physically attacked Bryan walking home from school, and he had damaged their mother’s car. The family found the behavior disturbing enough to move away from the area. Heriberto had blocked Juan on his Myspace page. Within a few months of the family’s move, Juan made the threat on Myspace to Kevin. Such evidence supports a reasonable inference that Juan intended the threat to be taken seriously by Kevin and communicated or otherwise shared with his older brothers.

The facts are similar to *In re David L.*, *supra*, 234 Cal.App.3d 1655, where a threat to kill was made through a friend. There, the minor had been harassing the victim at school for a period of time. The minor confronted the victim, who was talking with a female friend at their school lockers, and threw a punch at him. In response, the victim knocked the minor to the ground. The following day, the minor called the victim’s female friend and told her he was angry about the fight. When she asked what he was going to do about it, he told her to listen. She heard a clicking sound in the phone and when she asked what it was, the minor said it was a gun and that he was going to shoot her friend. The next day, she told the victim about the minor’s threat to kill him. (*Id.* at p. 1658.)

In concluding sufficient evidence supported the finding the minor had made a criminal threat pursuant to section 422, the court explained: “[T]he climate of hostility between the minor and the victim in which the threat was made and the manner in which it was made readily support the inference the minor intended the victim to feel threatened. The communication of the threat to a friend of the victim who was also witness to certain of the antecedent hostilities supports the inference the minor intended the friend act as intermediary to convey the threat to the victim.” (*In re David L.*, *supra*, 234 Cal.App.3d at p. 1659.)

The facts are even stronger here. Juan's conduct in the days following the January 1 threat provides further corroboration for the intent behind it. Juan made threatening updates to Myspace referring to the brothers as "snitches" and that he was going to "catch" them. On January 8, he saw Heriberto outside Tam's restaurant and immediately charged him, screaming threats, throwing gang signs and showing Heriberto that he had a gun. The totality of the circumstances surrounding the making of the threat reasonably supports the inference that Juan knew Kevin was aware of Juan's prior threatening conduct directed at Kevin's family and that the only reasonable response to the posting of the specific threat to kill his brothers was that Kevin would show it to them to warn them.

Finally, despite Juan's argument to the contrary, the threat was sufficiently specific and reflected an immediate prospect of execution when judged in the context in which it was made and the parties' relationship. It identified the Penal Code section for homicide and identified the two victims by their known nicknames. The threat was unequivocally understood by Kevin, Heriberto and Bryan as a threat to kill both Heriberto and Bryan and placed the brothers in fear for their safety. No further specificity was required. "It is enough to threaten 'death or great bodily injury to another person.'" (*In re David L.*, *supra*, 234 Cal.App.3d at p. 1660 [threat to kill specific victim was sufficiently specific despite lack of identification of a time and precise manner of execution].)

Juan points to the fact the threat was not reported to the police until a week later, arguing it shows that even Heriberto and Bryan did not take the threats seriously or believe that Juan intended to carry them out. Their direct testimony was to the contrary. However, that the brothers may have had concerns about reporting the threat to the police before ultimately going to them for help is not unreasonable given the history of Juan's escalating aggression, his known association with gang members, and his multiple "snitch" references. We cannot say that fact alone negates the import of the remaining evidence and reasonable inferences therefrom, taken in their totality, which support a finding the threat was sufficiently unequivocal and

specific and conveyed a gravity of purpose and prospect of execution within the meaning of the statute. The record amply supports the trial court's findings in sustaining the petition as to count 2.

DISPOSITION

The order of wardship is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.